SHARIFAH ASIAH SYED ABD. RAHMAN

v.

ABD. RAHMAN LONG & ANOR

HIGH COURT MALAYA, KUALA LUMPUR
SITI NORMA YAAKOB J
[CIVIL SUIT NO. 898 OF 1977]
11 MAY 1983

DAMAGES: *Liability against defendants agreed at 100% - Injuries to infant plaintiff caused in motor accident - Question of quantum.*

The infant plaintiff through her father and next friend filed an action against the defendants for injuries suffered in a motor accident caused by the 1st defendant and the defendants conceded that they were 100% to be blamed for the accident. The only issue was on quantum for the infant plaintiff's injuries which was classified into three categories:

(1) Fracture of her superior and inferior pubic bones which had since united but had left ½" shortening of her right hip. This shortening had in no way affected her gait, she walks normally and she has no difficulty in squatting down.

(2) Fracture of her left acetabulum which has also united well.

(3) Tear in the posterior vaginal wall which has left her without her hymen and her vagina badly scarred. Initially it affected her urinary tract and she had great difficulty in controlling her urine. For the first three years after the accident she had to take with her school ten panties and she was constantly urinating. However this was corrected by surgery and she was able to control her urine and menstruate without complication.

The latest medical report showed that the infant plaintiff suffered no permanent disability as she will be able to have a normal sexual life and conceive and bear children.

Held:

[1] The Court awarded RM30,000 for general damages with interest at the rate of 8% p.a. from the date of service of writ to date of judgment,

(a) RM20,000 for the fracture of the public bones with ½" shortening and also the fracture of the left acetabulum.

(b) RM10,000 for the pain and suffering that the infant plaintiff had undergone and the loss of one of her genital organs.

[2] RM1,454.72 as agreed special damages with interest at the rate of 4% p.a. from the date of accident to the date of judgment and costs.

[3] As the plaintiff was a minor the judgment sum was ordered to be deposited with the Public Trustee to be held in trust for her education, maintenance and other benefits until she reaches majority with liberty to apply.

[Plaintiff's claim allowed.]

(a) *Liability against defendants agreed at 100%.*

(b) *General damages RM30,000 with interest at 8% p.a.*

(c) *Special damages - RM1,454.72.*

(d) *Costs.*

Cases referred to:
John Arthur Harper v. Lim Ah Nou [1982] 2 MLJ xlviii
Lee Yew Hoe v. Lee Bock Huat [1980] 2 MLJ 271

For the plaintiff - R.K. Nathan
For the defendants - Satwant Kaur; FC

JUDGMENT

Siti Norma Yaakob J:

In this action the defendants conceded they are 100% to blame for the accident and they also agree to the special damages claimed in the sum of RM1,454.72 at the usual rate of interest. The only issue is on quantum for the injuries suffered by the infant plaintiff which fall into 3 categories.

(1) Fracture of her superior and inferior pubic bones which has since united but have left ½" shortening of her right hip. Fortunately this shortening has in no way affected her gait, she walks normally and she has no difficulty in squatting down.

(2) Fracture of the left acetabulum which has also united well.

(3) Tear in the posterior vaginal wall which has left her without her hymen and her vagina badly scarred. Initially it affected her urinary tract and she had great difficulty in controlling her urine. For the first three years after the accident she had to be armed with ten panties before going to school and she was constantly urinating. However, this has been corrected by surgery and she is now able to control her urine and menstruate without complication. The loss of her genital organ had also prompted her Counsel to urge that over and above the amount that she will receive for the three injuries, I should also consider awarding her another sum for loss of her womanhood. Counsel likened the loss of her hymen to the position of one who has been raped of her virginity. I would not go that far as to hold that, as the offence of rape connotes a criminal violation on the person of a female by a male and in this case this unfortunate loss of her female organ was as a result of a motor accident. Of course I am not forgetting the fact that it was the defendants who had caused the accident and she shall be adequately compensated but not under the so-called loss to her womanhood. Furthermore the latest medical report P1 shows that the infant plaintiff suffered no permanent disability as she will be able to have a normal sexual life and to conceive and bear children.

Various authorities were cited to assist me in arriving at the amount of damages to be awarded for pain and suffering but I shall deal only with the one which I consider to fall on almost all fours with the injuries suffered by the plaintiff and which was decided nearer in point of time.

This is the Singapore case of *John Arthur Harper v. Lim Ah Nou* [1982] 2 MLJ xlviii where RM20,000 was awarded in April 1982 for a posterior dislocation of the right hip with a fracture of the acetabulum and a possible crack fracture of the inferior and superior pubic bones. The other cases cited were decided 7 or 8 years ago which I found to be not helpful as social and economic conditions were quite different from what they are today. See the case of *Lee Yew Hoe v. Lee Bock Huat* [1980] 2 MLJ 271.

Based on the *John Arthur Harper's* case above, I award the plaintiff RM20,000 for the fractures to the pelvic bones with ½" shortening and also the fracture of the left acetabulum. As for the injury to the vagina, urethra and loss of her hymen, I consider that this injury

must have caused profound fear, anxiety and trauma to the plaintiff as she had been under constant medical attention for almost seven years. During that period she had had a number of dilations done to her urethra (I accept the mother's evidence on this) and this was lastly followed by the corrective surgery that proved successful. Although she still complains that she menstruates irregularly, this may well be due to other factors. I notice the plaintiff is tall and lanky for a 15 years old but given her time and good nourishment her menstrual cycle may sought itself out. For the pain and suffering that she had undergone and the loss of one of her genital organs, I would award her another RM10,000.

There will then be judgment to the plaintiff for the sum of RM30,000 general damages, interest at the rate of 8% per annum from date of service of writ to date hereof and RM1,454.72 agreed special damages, interest at the rate of 4% per annum from date of accident to date hereof and costs. As the plaintiff is still a minor, I also direct that the judgment sum be deposited with the Public Trustee to be held on trust for her education, maintenance and other benefits until she reaches majority with liberty to apply.

Also found at [1983] 1 CLJ 329